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[Additional counsel appear on signature page]

**UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF CALIFORNIA**

NATHAN KRUM, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

WESTERN DIGITAL TECHNOLOGIES, INC;  
and DOES 1-10,

Defendants.

MATTHEW PERRIN and BRIAN BAYERL,  
individually and on behalf  
of all others similarly situated,

Plaintiffs,

v.

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Case No. 3:23-cv-04152-VC

**CORRECTED NOTICE OF JOINT  
MOTION TO CONSOLIDATE CASES;  
MEMORANDUM OF LAW IN SUPPORT;  
AND DECLARATION OF CHRIS W.  
CANTRELL IN SUPPORT**

Date: Thursday, October 19, 2023  
Time: 10:00 a.m.  
Dept: Courtroom 4 – 17<sup>th</sup> Floor  
Judge: Hon. Vince Chhabria

5:23-cv-04201-VC

SANDISK, LLC, *et al.*,

Defendants.

SAIF JAFRI, individually and on behalf  
of all others similarly situated,

5:23-cv-04206-VC

Plaintiff,

v.

SANDISK LLC, and WESTERN DIGITAL  
CORPORATION,

Defendants.

EMILIO POUSA, individually and on behalf  
of all others similarly situated,

5:23-cv-04281-VC

Plaintiff,

v.

WESTERN DIGITAL TECHNOLOGIES, INC.,

Defendant.

FRAN BAX, individually and on behalf  
of all others similarly situated,

5:23-cv-04543-VC

Plaintiff,

v.

WESTERN DIGITAL CORPORATION,

Defendant.

NATHAN JACKSON, on behalf of himself and all  
others similarly situated,

5:23-cv-04681-SVK

Plaintiff,

v.

WESTERN DIGITAL CORPORATION;  
WESTERN DIGITAL TECHNOLOGIES, INC.;  
and SANDISK, LLC,

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Defendants.
TOM GARY, DANA CAMP, MATTHEW DEBONIS, SHAWN KIRKBRIDE, JOSEPH MCGUINNESS, and LI WANG individually and on behalf of all others similarly situated,  Plaintiffs,  v.  SANDISK LLC; WESTERN DIGITAL CORPORATION; WESTERN DIGITAL TECHNOLOGIES, INC.,  Defendants.

3:23-cv-04815

1           **PLEASE TAKE NOTICE** that on October 19, 2023, at 10:00 a.m. or as soon thereafter as the  
 2 motion may be heard before the Honorable Vince Chhabria in Courtroom 4 of the United States District  
 3 Court for the Northern District of California, plaintiffs Nathan Krum, Matthew Perrin, Brian Bayerl,  
 4 Saif Jafri, Emilio Pousa, Fran Bax, Nathan Jackson, Tom Gary, Dana Camp, Matthew Debonis, Shawn  
 5 Kirkbride, Joseph McGuinness, and Li Wang (collectively “Plaintiffs”) from each of the above-  
 6 captioned matters will and hereby do jointly move the Court for an order (the “Motion”):

7           1.       Consolidating, pursuant to Federal Rule of Civil Procedure 42(a), *Krum v. Western*  
 8 *Digital Technologies, Inc., et al.*, Case No. 3:23-cv-04152-VC (N.D. Cal.); *Perrin, et al. v. SanDisk,*  
 9 *LLC, et al.*, Case No. 23-cv-04201-VC (N.D. Cal.); *Jafri v. SanDisk, LLC, et al.*, Case No. 23-cv-  
 10 04206-VC (N.D. Cal.); *Pousa v. Western Digital Technologies, Inc., et al.*, Case No. 23-cv-04281-  
 11 VC (N.D. Cal.); *Bax v. Western Digital Corporation*, Case No. 5:23-cv-04543-VC (N.D. Cal.),  
 12 *Jackson v. Western Digital Corporation, et al.*, Case No. 23-cv-04681-SVK (N.D. Cal.); and *Gary*  
 13 *SanDisk, LLC, et al.*, Case No. 3:23-cv-04815 (N.D. Cal.) (the “Related Actions”); and any future  
 14 related actions filed in, removed to, or transferred to this Court, under the docket number of the first-  
 15 filed *Krum* case, No. 3:23-cv-04152-VC, and under the title *In re SanDisk SSD Litigation*;

16           2.       Setting a deadline for Plaintiffs’ counsel to file any interim class leadership motions  
 17 pursuant to Federal Rule of Civil Procedure 23(g) within ten (10) days of the Court’s order  
 18 consolidating the Related Actions; and

19           3.       Setting a deadline for the filing of a consolidated amended complaint within 30 days of  
 20 the Court’s order appointing interim class counsel.

21           4.       Plaintiffs’ motion is based on this notice of motion, the incorporated memorandum of  
 22 law; the Declaration of Chris W. Cantrell (hereinafter “Cantrell Decl.”); the Proposed Order submitted  
 23 herewith; and any other matter the Court may wish to consider. Copies of the operative complaints in  
 24 *Krum v. Western Digital Technologies, Inc., et al.*, Case No. 3:23-cv-04152-VC (N.D. Cal.); *Perrin,*  
 25 *et al. v. SanDisk, LLC, et al.*, Case No. 23-cv-04201-VC (N.D. Cal.); *Jafri v. SanDisk, LLC, et al.*,  
 26 Case No. 23-cv-04206-VC (N.D. Cal.); *Pousa v. Western Digital Technologies, Inc., et al.*, Case No.  
 27 23-cv-04281-VC (N.D. Cal.); *Bax v. Western Digital Corporation*, Case No. 5:23-cv-04543-VC (N.D.

1 Cal.), *Jackson v. Western Digital Corporation, et al.*, Case No. 23-cv-04681-SVK (N.D. Cal.); and  
2 *Gary v. SanDisk, LLC, et al.*, Case No. 3:123-cv-04815 (N.D. Cal.) are attached hereto as Exhibits A  
3 – G, to the Cantrell Decl.

4 5. Counsel for Plaintiffs in each of the Related Actions have all been contacted and  
5 consent to this Motion. Plaintiffs’ Counsel in all the Related Actions join in the instant motion.

6 6. Counsel for Defendants SanDisk LLC, Western Digital Corporation and Western  
7 Digital Technologies, Inc. (“Defendants”) were contacted about the instant motion. Defendants are  
8 unable to specify whether they oppose or consent to consolidation of the Related Actions. Therefore,  
9 the instant motion is being filed as an opposed motion.

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
**MOTION TO CONSOLIDATE CASES**

**I. INTRODUCTION**

Plaintiffs Nathan Krum, Nathan Krum, Matthew Perrin, Brian Bayerl, Saif Jafri, Emilio Pousa, Fran Bax, Nathan Jackson, Tom Gary, Dana Camp, Matthew Debonis, Shawn Kirkbride, Joseph McGuinness, and Li Wang (collectively “Plaintiffs”) in the above-captioned actions respectfully move the Court for an order: (1) Consolidating *Krum v. Western Digital Technologies, Inc., et al.*, Case No. 3:23-cv-04152-VC (“*Krum*”); *Perrin, et al. v. SanDisk, LLC, et al.*, Case No. 23-cv-04201-VC (N.D. Cal) (“*Perrin*”); *Jafri v. SanDisk, LLC, et al.*, Case No. 23-cv-04206-VC (N.D. Cal.) (“*Jafri*”); *Pousa v. Western Digital Technologies, Inc., et al.*, Case No. 23-cv-04281-VC (N.D. Cal.) (“*Pousa*”); *Bax v. Western Digital Corporation*, Case No. 5:23-cv-04543-VC (N.D. Cal.) (“*Bax*”); *Jackson v. Western Digital Corporation, et al.*, Case No. 23-cv-04681-SVK (N.D. Cal.) (“*Jackson*”); and *Gary v. SanDisk, LLC, et al.*, Case No. Case 3:23-cv-04815 (N.D. Cal.) (“*Gary*”) (collectively, the “Related Action(s)”)¹ and any future related actions filed in, removed to, or transferred to this Court pursuant to Federal Rule of Civil Procedure 42(a) under the docket number of the first-filed *Krum* case, No. 3:23-cv-04152-VC, and under the title *In re SanDisk SSD Litigation*; (2) setting a deadline to file any interim class counsel motions pursuant to Federal Rule of Civil Procedure 23(g) within ten (10) days of the Court’s order consolidating the Related Actions; and (3) setting a deadline for the filing of a consolidated amended complaint within 30 days of the Court’s order appointing interim class counsel.

Consolidation of the Related Actions is warranted because the Related Actions are all proposed class action lawsuits that allege common questions of law and fact, as well as overlapping parties, claims and putative classes. In each of the Related Actions, the Plaintiffs allege that SanDisk LLC (“SanDisk”), Western Digital Corporation, and/or Western Digital Technologies, Inc., (“Western Digital”) (collectively, the “Defendants”) have manufactured and sold defective portable SSDs which, for nearly a year, have had a significant risk of spontaneous failure, resulting in total data loss for the

¹ For purposes of this motion, citation to any of the Related Actions shall be in reference to their respective complaints: *Krum* (Cantrell Decl. at Ex. A); *Perrin* (Cantrell Decl. at Ex. B); *Jafri* (Cantrell Decl. at Ex. C); *Pousa* (Cantrell Decl. at Ex. D); *Bax* (Cantrell Decl. at Ex. E); *Jackson* (Cantrell Decl. at Ex. F) and *Gary* (Cantrell Decl. at Ex. G).

1 user, and that Defendants have failed to acknowledge or meaningfully correct the problem despite  
2 knowing about it since at least January 2023.

3 Counsel for Plaintiffs in each of the Related Actions support and join in this Motion to  
4 consolidate the Related Actions. Counsel for Defendants were contacted about the instant motion and  
5 have indicated they are unable to state whether they oppose or consent to consolidation of the Related  
6 Actions. As a result, this Motion is being filed as an opposed motion.

## 7 **II. ISSUE TO BE DECIDED**

8 The sole issue to be decided on this Motion is whether the Related Actions should be  
9 consolidated under *Fed. R. Civ. P.* 42(a) and the Court set an initial schedule.

## 10 **III. BACKGROUND**

11 The Related Actions all similarly allege that SanDisk Extreme, SanDisk Extreme Pro, and  
12 Western Digital My Passport portable Solid-State Drives (the “SSDs,” or, the “Drives”) have suffered  
13 and may continue to suffer from a defect that causes complete data loss without any warning (the  
14 “Defect”). *Krum* ¶ 13; *Perrin* ¶ 3; *Jafri* ¶ 1; *Pousa* ¶¶ 10-11; *Bax* ¶ 1; *Jackson* ¶ 2; *Gary* ¶ 3. The  
15 Defect has afflicted the SSDs since at least November 2022, yet Defendants have taken no action to  
16 materially remedy the situation. *See, e.g., Perrin* ¶¶ 24, 33. Rather, SanDisk and Western Digital have  
17 continued to sell the Drives, representing that they are reliable and are “Pro” grade. Accordingly, the  
18 Related Actions allege that Defendants’ conduct is a breach of express and implied warranties, and a  
19 violation of California’s CLRA, UCL, and FAL, among other laws. *Krum* ¶¶ 55-87; *Perrin* ¶¶ 128-  
20 166; *Jafri* ¶ 7; *Pousa* ¶¶ 76-83; *Bax* ¶ 146-165; *Jackson* ¶ 37-118; *Gary* ¶ 77-252. In addition to  
21 CLRA, UCL, FAL, and common law claims, the *Bax* action alleges violations of New York General  
22 Business Law §§ 349, *et seq.* (*Bax* ¶¶ 166-181), the *Perrin* action alleges violations of Florida’s  
23 Deceptive and Unfair Trade Practices Act, Fla. Stat. §501.201, *et seq.* (*Perrin* ¶¶ 167-177), and the  
24 *Gary* action alleges violations of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. Ann.  
25 §42-110a, *et seq.* (“CUTPA”), the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §  
26 501.201, *et seq.* (“FDUTPA”), the Georgia Fair Business Practices Act, O.C.G.A. §10-1-390  
27 (“GFBPA”), *et seq.*, the Missouri Merchandise Practices Act (“MMPA”), Mo. Rev. Stat. §§407.010,

1 *et seq.*, the Ohio Consumer Sales Practices Act (“OCSPA”), Ohio Rev. Code Ann. §§ 1345.01, *et seq.*,  
 2 and the Ohio Deceptive Trade Practices Act (“ODTPA”), Ohio Rev. Code §4165.01 *et seq.* (Gary ¶¶  
 3 184-252). Each of the Related Actions are based in the same allegations, and each brings the same  
 4 type of warranty and consumer protection claims.

5 The Defect in Defendants’ SSDs goes to the Drives’ core functionality as memory storage  
 6 devices that are supposed to allow the transfer and storage of data from other devices such as  
 7 computers. Defendants market these defective SSDs to consumers as a place where they can “back  
 8 up” a user’s files “in one location.” *Jafri* ¶ 2. Defendants even encourage users to download their file  
 9 management application that will “automatically move files from your device to your SSD to free up  
 10 space,” conveying the impression that storage in other locations (as a failsafe or otherwise) is not  
 11 necessary once data is loaded onto the Drives. *Id.* For many consumers, this means transferring over  
 12 thousands of photos and videos of precious moments with family and friends, among other personal  
 13 data. Once that data is gone, it’s gone for good. No reasonable consumer would expect Defendants’  
 14 SSDs, which are marketed to last for years, to do so; they reasonably would not be expected to trust  
 15 their data to such a fatally defective device. Regardless, Defendants continue to market the drives as  
 16 if nothing is wrong.

17 The injuries suffered by Plaintiffs in the Related Actions are all largely the same: they  
 18 purchased SSDs that were not fit for sale and lost sometimes irreplaceable data because of Defendants’  
 19 failure to recall the Drives or warn consumers about the Defect, received equally defective replacement  
 20 drives upon return to Defendants, purchased replacement drives or suffered other cognizable losses.

#### 21 **IV. ARGUMENT**

##### 22 **A. The Related Actions Should be Consolidated Under Rule 42(a)**

##### 23 **1. Legal Standard for Rule 42(a) Consolidation**

24 Under Federal Rule of Civil Procedure 42(a), consolidation of cases is permitted “[w]hen  
 25 actions involving a common question of law or fact are pending before the court . . .” *Fed. R. Civ. P.*  
 26 42(a). District courts have “broad discretion” to consolidate actions under Rule 42(a). *Shenwick v.*  
 27 *Twitter, Inc.*, 2016 WL 10672428, at \*1 (N.D. Cal. 2016) (quoting *Investors Research Co. v. Dist.*



1 *Court*, 877 F.2d 777, 777 (9th Cir. 1989)). In determining whether to consolidate cases, the Court  
 2 should “weigh the interest of judicial convenience against the potential for delay, confusion, and  
 3 prejudice.” *Zhu v. UCBH Holdings, Inc.*, 682 F. Supp. 2d 1049, 1052 (N.D. Cal. 2010).

4 Consolidation of similar class actions expedites pretrial proceedings, reduces case duplication,  
 5 avoids the need to contact parties and witnesses for multiple proceedings, and minimizes the  
 6 expenditure of time and money for all parties involved. *Paxonet Commc’ns, Inc. v. TranSwitch Corp.*,  
 7 303 F. Supp. 2d 1027, 1029 (N.D. Cal. 2003) (finding that cases had significant legal and factual  
 8 overlap, and holding “the Court believes that judicial efficiency will be served by consolidating these  
 9 actions”); *see also Kamakahi v. Am. Soc’y for Reprod. Med.*, 2012 WL 892163, at \*2 (N.D. Cal. 2012)  
 10 (“The Court finds that consolidation will serve the interests of efficiency and judicial economy.”);

## 11 **2. Consolidation Is Appropriate Under Rule 42(a)**

12 The Complaints in each of the Related Actions assert common causes of action against common  
 13 defendants (SanDisk and Western Digital) in response to the same alleged misconduct (Defendants’  
 14 manufacture and sale of specific defective models of SSDs from November 2022 onwards). The  
 15 Related Actions commonly seek certification of similar classes and allege that class members suffered  
 16 similar harms as a result of Defendants’ conduct. *Krum* ¶ 38; *Perrin* ¶ 48; *Jafri* ¶ 46; *Pousa* ¶ 37; *Bax*  
 17 ¶ 101; *Jackson* ¶ 55; *Gary* ¶ 50.

18 Consolidation of the Related Actions is warranted because it will simplify discovery, pretrial  
 19 motions, class certification issues, and other case management issues, especially because the Related  
 20 Actions are at their procedural inception. *See In re Accellion, Inc. Data Breach Litigation*, No. 5:21-  
 21 cv-01155-EJD, 2022 WL 767279 (N.D. Cal. Mar. 14, 2022) (granting similar motion to consolidate  
 22 related actions). Consolidating the Related Actions will also reduce the confusion and delay that may  
 23 result from prosecuting related putative class actions separately, including eliminating duplicative  
 24 discovery and the possibility of inconsistent rulings on class certification, *Daubert* motions, and other  
 25 pretrial matters. Furthermore, consolidation will foster judicial economy and will not prejudice any  
 26 party, and unnamed class members will benefit from consolidation because they will have only one  
 27 case to monitor. *Takeda v. Turbodyne Techs., Inc.*, 67 F. Supp. 2d 1129, 1133 (C.D. Cal. 1999)

1 (“Absent class members will best be served by consolidation because they will have just one case to  
2 monitor as it proceeds through litigation.”).

3 Consolidation also will promote judicial economy by streamlining case management,  
4 discovery, and dispositive motion proceedings, and will reduce confusion or delay. Similarly, the  
5 parties and the Court will benefit from consolidation by reference to a single set of pleadings, motions,  
6 written discovery, produced documents, and deposition transcripts. Defendants will not be required to  
7 respond to several separate complaints on different time frames potentially raising different issues, but  
8 rather a single consolidated amended complaint. Accordingly, “[c]onsolidating these cases for all  
9 purposes will be the most efficient solution for the court, and will ease the litigation burden on all  
10 parties involved.” *Takeda*, 67 F. Supp. 2d at 1133.

## 11 **V. CONCLUSION**

12 Plaintiffs respectfully request the Court to grant their motion and enter an order: (1)  
13 consolidating the Related Actions; (2) setting a deadline for Plaintiffs’ counsel to file any interim class  
14 leadership motions pursuant to Federal Rule of Civil Procedure 23(g) within ten (10) days of the  
15 Court’s order consolidating the Related Actions; and (3) setting a deadline for the filing of a  
16 consolidated amended complaint within 30 days of an order appointing interim class counsel. A  
17 proposed order granting this relief and these deadlines is submitted herewith.

18  
19 Dated: September 24, 2023

Respectfully submitted,

20 /s/ Chris W. Cantrell

21 Chris W. Cantrell

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\* Application for admission *pro hac vice* to be filed

**CERTIFICATE OF SERVICE**

I hereby certify that on September 25, 2023, a true and correct copy of the foregoing Notice of Motion and Memorandum in Support of Unopposed Joint Motion for Consolidation, Declaration of Chris W. Cantrell, Esq. and [PROPOSED] Order were filed using the Court's CM/ECF system, copies of which were forwarded to all counsel of record via the CM/ECF system. Copies were also sent via email and U.S. First Class Mail to the counsel for Defendants in all matters and counsel for Plaintiffs in the *Perrin, Jafri, Pousa, Bax, Jackson* in the *Jackson* matter:

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